

ARKANSAS COURT OF APPEALS

DIVISION III
No. CACR09-933

CORNELIUS JOSEPH McCASTLE

APPELLANT

V.

STATE OF ARKANSAS

APPELLEE

Opinion Delivered May 11, 2011

APPEAL FROM THE ARKANSAS
COUNTY CIRCUIT COURT,
NORTHERN DISTRICT
[NO. CR-08-175]

HONORABLE DAVID G. HENRY,
JUDGE

REMANDED WITH
INSTRUCTIONS; REBRIEFING
ORDERED

JOSEPHINE LINKER HART, Judge

In an opinion handed down on February 16, 2011, we remanded this case to the Arkansas County Circuit Court to correct an obvious discrepancy between the jury verdict and the judgment and commitment order. At trial, McCastle had been found guilty of simple possession of cocaine, a Class C felony. He was sentenced as a habitual offender to seventeen years in the Arkansas Department of Correction. However, the judgment and commitment order stated that he had been convicted of possession of cocaine *with intent to deliver*, a Class Y felony. The judgment and commitment order did show the correct seventeen-year sentence. This case is once more before us and we note that problems persist with the judgment and commitment order. It does not reflect that McCastle was sentenced as a habitual offender.

Accordingly, his seventeen-year sentence for a Class C felony appears to be illegal on the face of the judgment and commitment order. Without habitual-offender status, the sentence range for a Class C felony is not less than three, nor more than ten years. Ark. Code Ann. 5-4-401(a)(4) (Repl. 2006). It is only with the habitual-offender enhancement that McCastle's sentence falls within the legal range for his conviction—three to thirty years. Ark. Code Ann. 5-4-501(b) (Repl. 2006).

As we noted in our February 16, 2011 opinion, when there is an apparent discrepancy between the jury verdict and the judgment and commitment order, it is appropriate to reinvest jurisdiction with the trial court to correct the discrepancy. *Massey v. State*, 2010 Ark. App. 683. We direct the circuit court to enter an order nunc pro tunc to correct this clerical error in the judgment and commitment order. *State v. Rowe*, 374 Ark. 19, 285 S.W.3d 614 (2008). We therefore remand this case to the trial court with instructions to enter a corrected judgment and commitment order.

When we previously remanded this case, it was returned to us with only the new judgment and commitment order stapled to the transcript. Appellate counsel apparently did not realize that he was obligated to supplement the addendum with the new judgment and commitment order. We direct appellate counsel to properly supplement the addendum this time. It is axiomatic that, for our purposes, the abstract and addendum are the record on appeal. *Dorsey v. State*, 2010 Ark. App. 742. This court has stated that the record on appeal is limited to what is included in the briefs and the burden is on the appellant to provide an

Cite as 2011 Ark. App. 345

abstract and addendum that complies with Arkansas Supreme Court Rule 4-2. We likewise find deficient the black and white photo copies of the color photographs of the contraband that were admitted at trial. These copies are little more than fuzzy light areas on a grainy-black background. The exhibit numbers are not legible. These copies of photographs are insufficient to give us a full and fair understanding of the case before us. We therefore order appellant to resubmit a brief with clear color copies of the pictures that appear in the transcript.

Remanded; rebriefing ordered.

GRUBER and MARTIN, JJ., agree.